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CHURCH UNION

AND

THE BILL

A POPULAR DIGEST
AND DISCUSSION

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CHURCH UNION AND THE BILL.

DRAWN together by a growing unity of faith and practice, and forced together by the necessities of their national religious life in Canada to consider the question of organic union, the Congregational, Methodist and Presbyterian Churches agreed upon and adopted a Basis of Union setting forth the common essential doctrines of faith held by all three Churches.

Upon this Basis these three Churches have decided by constitutional action to unite and form one Church to be named **"THE UNITED CHURCH OF CANADA."**

The Basis of Union contains an Appendix on Law dealing with the legislation necessary, and the proposed Bill has been drafted to meet its requirements. It provides:

(a) For the passing of special Acts of the Parliament of Canada and Provincial legislatures.

(b) For the incorporation of the **UNITED CHURCH OF CANADA.**

(c) For "ratifying and confirming the Basis of Union as agreed upon and empowering the United Church to hold property."

(d) For having the legislation in such form as will render impossible disputes

as to doctrine and property such as occurred in connection with the United Free Church of Scotland.

(e) For preserving the property rights of individual congregations.

Special Act Necessary.

Application is now being made to Parliament for the legislation required. The question at once arises, since the Presbyterian Church is not now incorporated, why should the United Church be incorporated? The reason appears in the following quotations from the opinions of Counsel: "In the present case the Basis of Union expressly provides that the United Church is to be an incorporated body. It is also necessary to incorporate in the Union large numbers of existing corporations. Many of the individual congregations, in all of the churches, are incorporated bodies. The Congregational denomination consists of separate autonomous units having no central governing body authorized to act on their behalf. The Methodist Church is a corporate body. All of the churches administer their funds and schemes largely through the medium of incorporated bodies. In order to combine and co-ordinate properly the various funds and schemes of The United Church it is necessary to have all these organizations com-

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bined, and, in our opinion, this can be done effectively only through legislation which unites and merges these many corporations into one body."

Since 1905 a sub-committee of the Joint Union Committee has been at work on the legislation. Upon that Committee from time to time there have been members who were opposed to the Union of the Churches, yet there is no record that at any time these members recorded any dissent as to the legal processes to be taken, or any doubt as to the desirability of exploring the whole situation to the last phrase of the last bill to give effect to the decisions of the Churches' Courts.

Principles of the Bill.

In 1907 the Joint Legal Committee set out the report and principles of legislation and decided to give a year for consideration and reflection.

In 1908 the Joint Legal Committee had come to the **unanimous** conclusion that if that Union was to be accomplished it should be done in the following way:

1. The United Church should be incorporated by Act of Parliament.
2. It should be made clear that the United Church possessed spiritual freedom and was independent in all matters of doctrine, discipline and polity.

3. The negotiating Churches would take with them into the Union all the denominational property, and the legislation would vest all this property in the United Church. Where a congregation held property solely for its own benefit such property would not be affected by the legislation without the consent of the congregation.
4. Provision would be made in the case of congregations holding property other than solely for their own benefit, by a new model trust deed.
5. In reference to colleges, they should bear the same relation to the United Church that they bear at present to their own denominations.
6. Federal legislation should be supplemented by Provincial legislation.

Provision for Minorities.

Although this was before all the churches from 1908 to 1921, in those thirteen years only one suggestion had been made for amendment of these principles, namely, that provision should be made for minorities. So in 1921 the Joint Committee appointed a new Committee on law and legislation to draft a bill embodying these principles. This was done and provision was made for dissenting minorities. Any congregation

which within six months of the proclamation of union decided by a majority vote not to concur, could hold its property solely for its own benefit. And so far as denominational property was concerned an impartial commission was arranged to decide the share of the minority.

The proposed Act of Parliament has been drafted in conformity with these principles. **What does it say?**

Digest of the Bill.

The preamble of the Bill explicitly states:

(1) That the three negotiating churches believe that the promotion of Christian unity is in accordance with the Divine will.

(2) That they recognize the obligation to seek and promote union with other churches, adhering to the same fundamental principles of the Christian faith.

(3) That they have the right to unite with one another without loss of their identity upon terms which they find to be consistent with such principles.

(4) That they have adopted a Basis of Union.

(5) That they have agreed to unite.

(6) That the name of the body so formed shall be—**THE UNITED CHURCH OF CANADA.**

In addition to the preamble, there are three or four sections which are of general interest to members and congregations, and they may be treated briefly as follows:

Section 3 has four clauses: Clause (a) sets forth that the union of these churches (agreed upon by themselves in terms of the preamble) shall become effective upon the day that this section comes into force and that the churches as so united (in terms of the preamble) are incorporated as "The United Church of Canada."

Clause (b) of Section 3 deals with the various holding bodies, boards, committees and corporate bodies of the Presbyterian, Methodist and Congregational Churches. It also admits churches known as Local Union Churches, and declares them to be congregations of the United Church.

Clause (c) of Section 3 excludes from membership in the United Church **both in fact and in law** members of non-concurring congregations which by their own action and in the regular way provided in Section 9 of the Act, decide not to concur in the union of the Congregational, Methodist and Presbyterian Churches.

Clause (d) of Section 3 excludes from the ministry of the United Church all ministers of the negotiating churches who declare their intention to the proper authorities,

within six months after the passing of the Act, not to become ministers of the United Church, and neither **in fact nor in law** do such ministers become ministers of the United Church. It reads as follows:

"Any minister of the negotiating churches may within six months after the passing of this Act notify the Clerk or Secretary of the General Council in writing, of his intention not to become a minister of the United Church, and in such event he shall not be deemed to have become, by virtue of the said union or of this Act, a minister of The United Church." (Clause D, Section 3.)

Section IV deals with the general or denominational property as distinct from local or congregational property and vests it in the incorporated Church, "to be held, used and administered subject to the provisions of this Act in accordance with the Basis of Union."

Look Now at Section 9.

This section deals with the property of congregations deciding not to enter the Union.

As Section 3 (c) dealt with the rights of non-concurring congregations in respect to **membership** in the **UNITED CHURCH OF CANADA**, so Section 9 deals with the rights

of such congregations in respect to their property.

It provides that any congregation may at a properly called meeting within six months of the coming into force of this section decide not to concur in the union of these three churches, and that, in such case, its property shall be held by the existing or other duly elected trustees "for the sole benefit of the said congregation." If such congregation should later decide to enter the union provisions are made for it to do so.

In addition to such a congregation retaining its own property, it is also entitled to a fair and equitable share of the denomination's property, real and personal, of all the assets and rights of the denomination to which such congregation belonged. (These assets are of various forms, such as stocks, bonds, debentures and other securities, such as the Century Fund, Forward Movement, Missionary Endowments, funds of various kinds, property, real and personal, held in trust for the Congregational, Methodist or Presbyterian Church, as the case may be.)

The equities of such non-concurring congregations are determined by a Commission in terms of Section 10.

Section 10, Sub-section 5, provides for the appointment of a Commission of 9 to determine what a fair or equitable share of the

denominational property may be. A similar Commission was established by an Act of Parliament in 1905 (1905 Ed. VII, Chap. 12) in connection with the Scottish Free Church case. In that Act the Imperial Parliament named the Commission and expressly stated that "no Court shall have power to review or interfere in any way with the orders or other proceedings of the Commission." The proposed Act provides for a Commission of 9 members: three appointed by the **UNITED CHURCH OF CANADA**, three by the non-concurring congregations, and the remaining three to be agreed upon by the six so appointed. All must be approved by the Chief Justice of Canada, and appointments are to be made by him in case of failure or refusal to appoint on the part of the bodies interested. Sub-Section (c) outlines the powers of the Commission, and Sub-section (d) determines the powers of the Commission in respect to the colleges. The succeeding sub-sections deal with the Commission's powers, procedure and awards and give the Commission power to make adequate provision for the training of students to minister to non-concurring congregations.

Section 20 determines the membership, time, place and date of the first meeting of the General Council. Its powers are those conferred on the General Council by the Act

and the Basis of Union. It will determine the number and boundaries of the Conferences to be established, the number of representatives to be chosen by each Conference to constitute the next General Council to be held within two years of the first meeting. What is done by the first General Council within the terms of the Act and the Basis of Union will be valid and binding until reviewed or until altered, amended or rescinded, by the next General Council or some succeeding General Council.

Section 27 is a Declaration.

(1) That the Union has been formed by the free and independent action of the churches.

(2) That procedure has been constitutional.

(3) That this Act has been passed at the request of the said churches.

(4) That the United Church is by this Act not limited in its independence.

(5) That the United Church has independent and exclusive right and power to legislate in all matters concerning doctrine, worship, discipline and government.

(6) That the United Church has the right and power from time to time to frame, adopt, alter, add to or modify its laws, subordinate standards and formulas

subject to the conditions and safeguards contained in the Basis of Union.

(7) That the United Church has the right to unite with any other Church or religious denomination without loss of its identity upon such terms as it may find consistent with the principles, doctrine and religious standards set forth in the Basis of Union or any amendment thereto made by the General Council and the provisions of the Basis of Union.

Co-ordination and Freedom.

One of the principles underlying the construction of the Basis of Union upon which these Churches are uniting is **co-ordination of effort for general purposes and at the same time the preservation of the freedom of individual congregations.**

"In the management of their local affairs the various churches, charges, circuits or congregations of the negotiating churches shall be entitled to continue the organization and practices (including those practices relating to membership, church ordinances, Sunday Schools and Young People's Societies) enjoyed by them at the time of the Union, subject in general affairs to the legislation, principles and discipline of The United Church. Their representatives in the

next higher governing body or court shall be chosen as at present." Basis, page 19, Charges existing previous to the Union.)

CONSTITUTIONAL PROCEDURE.

The request for legislation as presented by the Churches is constitutional in every way. The Churches have acted as their constitutions provide they shall act.

Since the question has arisen within the Presbyterian Church as to the regularity of procedure it may be desirable to point out what that procedure is.

The Presbyterian Church acts through its Courts. The General Assembly is the highest Court of the Church, and when the Assembly acts by a majority or with unanimity, under the authority of the Barrier Act, **the final constitutional action has been taken.** The rules of procedure pronounce the government of the Church to be by Session, Presbytery, Synod and General Assembly. This procedure was followed in the union of 1875.

The article declaratory of the Constitution of the Church of Scotland states: "Its government is Presbyterian, and is executed through Church Sessions, Presbyteries, Provincial Synods and General Assembly."

That the above claim is sound is proven by the Imperial Act of Parliament of 1921,

which states: "The declaratory articles are lawful articles and the Constitution of the Church of Scotland in matters spiritual is as therein set forth." These articles claim, among other things, "The right to unite with any such Church without loss of identity on the terms which this Church claims to be consistent with these articles," and the definition given of "any such Church" is one in which it finds the Word purely preached, the sacraments administered according to Christ's ordinances and discipline rightly exercised." The Church of Scotland interprets the Presbyterian Constitution as enabling it to do without interference of the civil authorities exactly what the Presbyterian Church in Canada is seeking to do.

If further demonstration of this principle is necessary a decision of the Supreme Court of the United States pronounced government of the Church by the above mentioned Courts to be an essential of Presbyterianism, and states that to this form of government every member implicitly promises submission when he becomes a voluntary member of the Church. The same Supreme Court further pronounces that the **General Assembly is the final judge of its own procedure which is not open to the review of the secular courts.**

Since the Presbyterian Church speaks through the Assembly and the Assembly

speaks for the Church, with the approval of Presbyteries under the Barrier Act, through the majority of its commissioners, the decision for union reached in 1916 by a vote of 406 to 90, and the request for legislation made by the Assembly of 1923 by a vote of 427 to 129, form a constitutional decision and request of the Presbyterian Church in Canada. Minority protests do not alter this fact.

Another Reference.

The call of the Opposition for another reference of the question to the members of the Church is an impossible ecclesiastical procedure as the following will show:

> A vote of the members has no constitutional value and is primarily for the information of the constitutional courts. The constitution of the Presbyterian Church in Canada does not call for it. The Declaration of the Church of Scotland makes no provision for such a vote. When the Union of Presbyterian Churches in Scotland took place in 1900 a vote of the membership was not taken by any of the bodies uniting.
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> A vote of the members of the negotiating Churches in Canada was taken to ascertain the mind of the people, and the vote would have been considered decisively in favour of Union in any other

situation. There was a similar mandate from Presbyteries. The Assembly of 1916, under the Barrier Act, decided for Union and closed the issue by a vote of 406 to 90. That vote was decisive. Since that date the question has not been open, and no vote of the people can be taken on a closed question.

No State Interference.

If legislators were to listen to the minority cry for another vote of the membership they would take upon themselves:

(a) The responsibility of reviewing Church procedure.

(b) Of declaring the constitutions of the negotiating Churches to be inadequate.

(c) Of ordering these Churches to act otherwise than their constitutions provide, in order to bring a perfectly regular request to the civil authorities.

If such a precedent were to be established it would at once become a matter of vital concern not only to the Churches now seeking legislation but to every religious organization in Canada.

We, therefore, respectfully urge the representatives of the people to recognize the freedom of the Church in a free country and to consider sympathetically the requests and claims of the Bill jointly presented by the negotiating Churches.